



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 24, 2003

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2003-2735

Dear Ms. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179959.

The Rowlett Police Department (the "department") received a request for all documents and photographs related to a specified investigation. You claim that the requested information may be subject to the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. We have considered your claim and reviewed the submitted information.

Section 159.002 of the MPA provides in relevant part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review of the submitted information, it appears that most of the submitted documents were not created or maintained by a physician or someone under the supervision of a physician. Moreover, most of the submitted documents do not contain information obtained from medical records.

We note, however, that the submitted information contains an autopsy report that was created by a physician. The MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” Occ. Code § 159.001. We do not believe that a deceased individual can be a “patient” under section 159.001 of the Occupations Code. In other words, the MPA protects only the medical records of patients who were alive at the time the records were created. Therefore, the submitted autopsy report is not subject to the MPA. *See also* Open Records Decision No. 272 (1981) (right of privacy lapses upon death). Accordingly, we find that none of the submitted documents are subject to the MPA, and they must be released.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

¹We note that some of the submitted information may be confidential and not subject to release to the general public. *See* Gov’t Code § 552.023. However, the requestor in this instance has a special right of access to the information. Gov’t Code § 552.023. Because some of the information may be confidential with respect to the general public, if the department receives a further request for this information from an individual other than this requestor or her client, the department should again seek our decision.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 179959

Enc: Submitted documents

c: Ms. Jennifer Hess
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